

August 22, 2003

CPR File # GAR0027

FRA Docket # 11068

DOT Docket Clerk
Docket Management Facility
Department of Transportation
400 Seventh Street SW
Nassif Building, Room PL-401
Washington, DC 20590-001

Re: Docket No. FRA 2001-11068, Notice No. 4
Proposed Rule Change to 49 CFR Part 219

Dear Sir:

Canadian Pacific Railway Company (CPR) hereby submits the following comments to the proposed rule as published in the Federal Register on July 28, 2003.

This summary of proposed changes is a marked improvement over the prior NPRM to which CPR made verbal and written comments. As all of CPR's current operations in the U.S. using Canadian Crews are under the proposed ten mile limit, the proposed rule changes are generally acceptable.

Two remaining questions that we have and to which the answer is not clear in the July 28 Federal Register (FR) summary deals with several references to "exceptions".

FR Item 2 permits operations up to 10 miles under the current exceptions. We read this as being the exceptions for foreign based employees currently provided in 49 CFR Part 219.3 (c).

FR Item 5 provides that FRA will except current employees from pre-employment drug testing, even where no other exception or waiver applies. This provision needs clarification, particularly if it applies to the employees who will be excepted under the provisions contained in FR Item 2.

Our first question is whether the pre-employment drug testing exception currently provided in 49 CFR Part 219.3 (c) will continue to apply to foreign based employees who enter U.S. service after the effective date of the final rule but who do not operate over 10 miles?

Our second question is whether the term "pre-employment" really means "pre-placement"? This item seems to say that pre-employment testing is not required for employees currently in the pools that operate trains across border, but, after the rule goes into effect, if employees (who may be long service employees) now bid successfully on such pools, they would not be able to enter the US until they had been pre-employment drug tested?

Verbal comments made by members of your Chief Counsel's office suggest that the proposed rule would require pre-placement testing of existing employees entering U.S. service after the effective date, even for trips of less than 10 miles. CPR has no objection to pre-employment testing. However, pre-placement testing of existing employees may conflict with CPR's collective agreements and with the intent of the July 2002 Canadian Human Rights Commission findings.

In either case, the language used in the final rules and the preamble to those final rules must answer the above questions with great clarity.

Sincerely,

SIGNED

James W. Kienzler
Director, Regulatory Affairs

cc: Grady C. Cothen, FRA Deputy Associate Administrator for Safety